

RETURN TO:  
BRIDGFORTH & BUNTIN  
P. O. BOX 241  
SOUTHAVEN, MS 38671  
393-4450

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P Book 87 Pg 589

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS AGREEMENT (the "Agreement"), made as of the 26<sup>th</sup> day of October, 2000 by and between Goodman Road/I-55 Development Company, LLC, an Arkansas Limited Liability Company having an address of c/o Clary Development Corporation; 2200 North Rodney Parham, Suite 210, Little Rock Arkansas 72212 ("Landlord"), Marshalls of MA, Inc., a Massachusetts corporation, having an address of Post Office Box 9123, 770 Cochituate Road, Framingham, Massachusetts 01701, Attention: Vice President Marshall's Real Estate ("Tenant"), and SouthTrust Bank ("Mortgagee").

**WITNESSETH:**

WHEREAS, Mortgagee is the holder of a certain deed of trust executed and delivered by Landlord which has been amended on several occasions (the "Mortgage"), which Mortgage secures a note made by Landlord to Mortgagee which on the date of filing hereof will have a principal amount of approximately Twenty Million Nine Hundred Forty Thousand and 00/100 Dollars (\$20,940,000.00) (the "Note"), and an Assignment of Rents and Leases (the "Assignment") (the Mortgage and Assignment, collectively, referred to herein as the "Security Instruments") which Security Instruments constitute a lien on certain estate and interest in and to the premises described in Exhibit A attached hereto and made a part hereof (the buildings and improvements from time to time situated upon the shopping center an its underlying realty are hereinafter called the "Mortgaged Premises"); and

WHEREAS, Tenant has entered into a certain lease dated on or about July 20, 2000 (said lease as heretofore modified or amended and supplemented is hereinafter called the "Lease"), with Landlord demising space in the Shopping Center constructed on the Mortgaged Premises known as Southlake Center, Southaven, MS, (the "Premises"); and

WHEREAS, Mortgagee has agreed to recognize the status of Tenant under the Lease and Tenant has agreed to attorn to the Mortgagee, upon and subject to the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the promises and mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. The Lease and any extensions, renewals, replacements or modifications made after the date hereof, and all of the right, title and interest of Tenant in and to the Premises are and shall be subject and subordinate to the lien of (but not the terms and conditions of) the Security Instruments and to any renewal, modifications, replacements, considerations and extensions thereof.
2. Provided that there is then no continuing default under section 13.1 of the Lease, Mortgagee agrees that (a) in the event of foreclosure of the Mortgage or Assignment, Tenant shall not be named as a party of any action or proceeding to enforce Mortgage, (b) in the event Mortgagee comes into possession or acquires title to the Premises as a result of the enforcement or foreclosure of the Mortgage, or as a result of any other means, Mortgagee agrees that Tenant shall not be disturbed in its possession or occupancy of the Premises and (c) Mortgagee will recognize the Lease and Tenant's rights thereunder.
3. Upon any foreclosure of the Mortgage or Assignment, or other acquisition of the Mortgaged Premises, Tenant shall attorn to Mortgagee or any other party acquiring said property or so succeeding to Landlord's rights and shall recognize Mortgagee as its landlord under the Lease.
4. Upon such foreclosure of the Mortgage or Assignment, or other acquisition of the Mortgaged Premises and attornment, the Lease shall continue as a direct lease between the Mortgagee and Tenant upon all terms, covenants and conditions thereof as are then applicable except that the Mortgagee shall not be (a) liable for any action of or omission of any prior landlord under the

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Lease unless Mortgagee has received notice thereof, (b) be bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, except such payment as may be required by Tenant under the Lease, or (c) liable for the return of any security deposit which Tenant may have paid to any prior landlord, unless mortgagee shall have actually received such deposit.

5. If Landlord shall default in the performance or observance of any of the terms, covenants, conditions or agreements in the Lease to be performed on the part of Landlord, Tenant shall give simultaneous written notice to Mortgagee in the manner described in said Lease. Prior to Tenant exercising its remedies under the Lease, Mortgagee shall have the same time period as Landlord to cure such default, but Mortgagee shall not be obligated to cure the default, unless and until Mortgagee (i) begins accepting rental payments under the Lease, (ii) becomes a mortgagee-in-possession, or (iii) otherwise succeeds to the interest of Landlord. Notwithstanding anything to the contrary, Mortgagee shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default.
6. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns. As used herein, (a) the term "Tenant" shall include any subtenant, successors and/or assigns of Tenant named herein; (b) the words "foreclosure" and "foreclosure sale" shall be deemed to include the acquisition of Landlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure; and (c) the word "Mortgagee" shall include the Mortgagee herein specifically named and any successors and assigns and shall include anyone or any entity who shall have succeeded to Landlord's interest in the Premises by, through or under foreclosure of the Mortgage or as a result of any other means.
7. Anything herein or in the Lease to the contrary notwithstanding, in the event that Mortgagee shall acquire title to the Mortgaged Premises, Mortgagee shall have no obligation, nor incur any liability, beyond Mortgagee's then interest, if any, in the Mortgaged Premises, the rentals arising therefrom and the proceeds of the sale thereof and Tenant shall look exclusively to such interest of Mortgagee, if any, in the Mortgaged Premises for the payment and discharge of any obligations imposed upon Mortgagee hereunder or under the Lease and Mortgagee is hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that with respect to any money judgement which may be obtained or secured by Tenant against Mortgagee, tenant shall look solely to the estate or interest owned by Mortgagee in the Mortgaged Premises and Tenant will not collect or attempt to collect any such judgement (i) from any officer, director, shareholder, partner, employ, agent or representative of Mortgagee or (ii) out of any assets of Mortgagee other than Mortgagee's estate or interest in the Mortgaged Premises or the proceeds from the sale thereof.
8. Whenever used herein, the singular shall include both the singular and the plural and the use of any gender shall apply to all genders.
9. This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi applicable to similar agreements made and to be performed entirely within said State. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing this Agreement to be drafted.
10. This Agreement shall not be modified or amended except in writing signed by all parties hereto.
11. All notices and other communications provided for hereunder shall be in writing and delivered to Tenant in the manner prescribed in said Lease, and to Mortgagee shall be in writing and given or served by the United States mail, postage prepared and certified with return receipt requested, or by a nationally recognized overnight courier service, addressed as follows:

SouthTrust Bank  
Post Office Box 2554 (35290) or  
420 North 20<sup>th</sup> Street (35203)  
Commercial Real Estate  
Birmingham, Alabama

12. Each entity executing and delivering this Agreement represents and warrants to the others that the individuals executing this Agreement on behalf of such entity are duly empowered and authorized to do so on behalf of such entity.
13. This Agreement shall bind and benefit the parties, their successors and assigns. If Mortgagee assigns the Security Instruments, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor accruing after the assignment shall terminate.
14. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

**IN WITNESS WHEREOF**, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first written above.

**LANDLORD:**

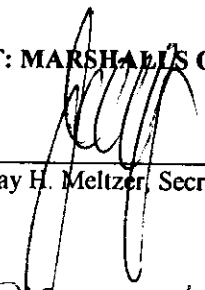
GOODMAN ROAD/I-55 DEVELOPMENT COMPANY, LLC

By: South Lake Centre, LLC, as Administrator

By: Clary Development Corporation,  
Its Authorized Member

By:   
Roger S. Clary, President

**TENANT: MARSHALLS OF MA, INC.**

By:   
Jay H. Meltzer, Secretary

By:   
Mary B. Reynolds, Treasurer

**MORTGAGEE:**

SOUTHTRUST BANK

By: 

Name: \_\_\_\_\_

MARK BRINTON

Title: \_\_\_\_\_

VICE PRESIDENT

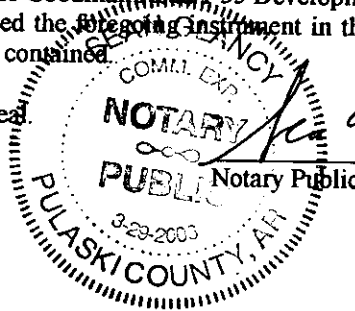
(NOTARY PAGES TO FOLLOW)

STATE OF ARKANSAS }

COUNTY OF PULASKI }

On this 24<sup>th</sup> day of October, 2000, before me, a Notary Public, personally appeared Roger S. Clary, who acknowledged himself to be President of Clary Development Corporation, the Authorized Member of South Lake Centre, LLC, which is the Administrator of Goodman Road/I-55 Development Company, LLC, and that he, as such officer, being authorized so to do, executed the foregoing instrument in the name of and on behalf of said limited liability company for the purposes therein contained.

WITNESS my hand and official seal.



My Commission Expires:

3/29/06

COMMONWEALTH OF MASSACHUSETTS }

COUNTY OF MIDDLESEX }

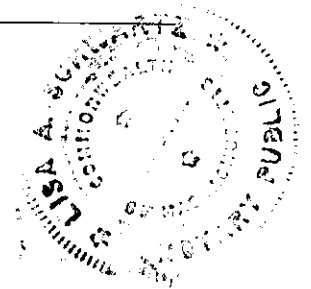
On this 24<sup>th</sup> day of October, 2000, before me, a Notary Public, personally appeared Jay H. McCreary, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires:

1-10-03

Lisa A. Schwartz  
Notary Public



COMMONWEALTH OF MASSACHUSETTS }

COUNTY OF MIDDLESEX }

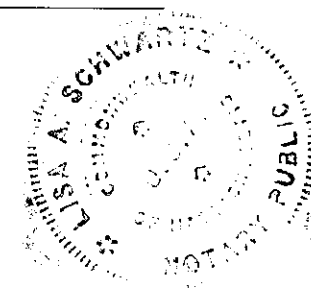
On this 24<sup>th</sup> day of October, 2000, before me, a Notary Public, personally appeared Mam B. Reynolds, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires:

1-10-03

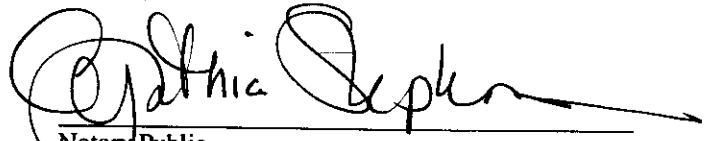
Lisa A. Schwartz  
Notary Public



STATE OF Alabama }  
COUNTY OF Jefferson }

On this 30<sup>th</sup> day of October, 2000, before me, a Notary Public, personally appeared Mark Brinton, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
11-4-00

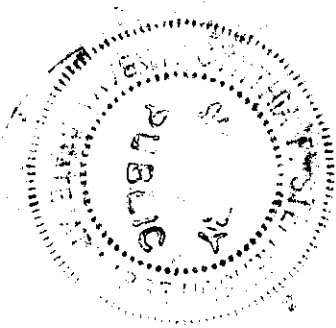


EXHIBIT A

p Book 87 Pg 595

**LEGAL DESCRIPTION**

A part of the NE1/4 of Section 36, T-1-S, R-8-W, Southaven, DeSoto County, Mississippi being more particularly described as follows:

Commencing at the NE Corner of said NE1/4 thence West, 341.69 feet; thence South, 69.54 feet to the South Right of Way line of Goodman Road (Mississippi Highway No. 302); thence S 89°19'03" W, along said South Right of Way line, 79.89 feet; thence N 88°25'04" W, along said South Right of Way line, 195.80 feet; thence S 89°19'10" W, along said South Right of Way line, 25.17 feet for the POINT OF BEGINNING. Thence along a curve to the left having a radius of 25.00 feet, an arc length of 39.03 feet and a chord bearing and distance of S 44°35'26" W, 35.19 feet; thence S 00°10'28" E, 248.80 feet; thence N 81°36'28" E, 138.77 feet; thence N 81°37'56" E, 192.04 feet; thence N 00°31'23" W, 20.21 feet; thence N 89°30'07" E, 286.68 feet; thence S 00°09'57" W, 60.20 feet; thence S 00°03'32" W, 12.66 feet; thence N 89°38'48" E, 52.61 feet to the East line of the NE1/4 of said Section 36; thence S 00°03'59" W, along said East line, 1097.38 feet; thence S 89°53'21" W, 1423.52 feet; thence N 00°03'36" W, 98.70 feet; thence S 89°58'56" E, 89.91 feet to the East Right of Way line of Southcrest Parkway; thence N 00°06'39" W, along said East Right of Way line, 155.50 feet; thence N 89°53'21" E, 97.01 feet; thence N 59°53'21" E, 136.24 feet; thence N 00°06'39" W, 216.88 feet; thence S 89°53'21" W, 215.00 feet to the East Right of Way line of Southcrest Parkway; thence N 00°06'39" W, along said East Right of Way line, 422.46 feet; thence N 00°06'40" W, along said East Right of Way line, 75.00 feet; thence along a curve to the left having a radius of 25.00 feet, an arc length of 39.27 feet, and a chord bearing a distance of S 45°06'39" E, 35.36 feet; thence N 89°53'21" E, 32.41 feet; thence N 81°38'16" E, 521.76 feet; thence along a curve to the left having a radius of 25.00 feet, an arc length of 32.91 feet, and a chord bearing and distance of N 43°55'49" E, 30.58 feet; thence N 06°13'22" E, 160.63 feet; thence N 00°08'18" W, 79.85 feet; thence along a curve to the left having a radius of 25.00 feet, an arc length of 39.74 feet, and a chord bearing and distance of N 45°40'22" W, 35.68 feet to the South Right of Way line of Goodman Road (Mississippi Highway No. 302); thence N 88°47'35" E, along said South Right of Way line, 25.61 feet; thence N 89°19'10" E, along said South Right of Way line, 82.38 feet to the POINT OF BEGINNING. Containing 32.921 Acres (1,434,047 Sq. Ft.) more or less.